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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

BRUCE CAHILL, an individual, et al.,) **CASE NO: 8:16-cv-00686-AG-DFM**

Plaintiffs,

-- VS. --

PAUL PEJMAN EDALAT, an individual, et al.,

Defendants.

AND RELATED CROSS-CLAIMS/COUNTERCLAIMS.

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS' AND ELEVEN
ADDITIONAL COUNTERCLAIM
DEFENDANTS' MOTION TO
DISMISS THE FIRST AMENDED
COUNTERCLAIM OF
DEFENDANT PAUL EDALAT
(DOC. #70)**

Date: September 19, 2016

Time: 10:00 a.m.

Place: Courtroom 10D

Honorable Andrew J. Guilford

United States Courthouse

411 West Fourth Street

Santa Ana, CA 92701-4516

i

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' AND ELEVEN ADDITIONAL
COUNTERCLAIM DEFENDANTS' MOTION TO DISMISS THE FIRST AMENDED
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1 Plaintiffs/Counterclaim Defendants Bruce Cahill, Gregory Cullen, Shane
 2 Scott, Ron Franco, and Pharma Pak, Inc. (herein sometimes referred to collectively
 3 as "Plaintiffs"), along with eleven additionally-named Counterclaim Defendants,¹
 4 respectfully submit this Memorandum in support of their Motion to Dismiss the
 5 First Amended Counterclaim (Docket No. 70) of Defendant Paul Edalat (herein
 6 "Edalat"), pursuant to Rule 12(b), Federal Rules of Civil Procedure.
 7

8 **Procedural History**

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 11 This Court's Minute Order (Docket 75) summed up the procedural history
 12 leading up to the Scheduling Conference held in this case on August 15, 2016.
 13
 14 Plaintiffs have now responded to the two Amended Counterclaims filed by
 15 Defendants Olivia Karpinski ("Karpinski") and Edalat by filing motions to strike
 16 them because they were not, as to Plaintiffs, timely filed. (*See*, Docket Nos. 72 and
 17 73). This present motion challenges Edalat's pleading under Rule 12(b)(6) on
 18 behalf of the original Plaintiffs and the newly-added Counterclaim Defendants.
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23 ¹ These include: Brent Cahill, Leslie Harold Wood, Ludwig Jan Weimann,
 24 Mark John Erfurt, Erton Aydinol, Kira Lindsay Cahill, Karen Jane Grobba-Cahill,
 25 Life Tech Global, LLC, Kira Investments, LLC, Cahill Family Trust, and Cahill
 26 Bruce E. Trust (herein referred to collectively as "Counterclaim Defendants"). The
 27 only counterclaim defendant not joining in this motion is Foundation Bank, which
 28 is separately represented.

ARGUMENT

I. The Well-Accepted Requirements for Stating a Claim

On a 12(b)(6) motion to dismiss, all allegations of material fact (no matter how false they are in fact) are taken as true and construed in the light most favorable to the non-movant. *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996). The Court, however, need not accept as true “allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” *In re Gilead Scis. Secs. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008). Although a complaint need not allege detailed factual allegations, it must contain sufficient factual matter, accepted as true, to “state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim must be facially plausible meaning that it “allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Edalat does not meet even this permissive standard.

II. Edalat's First Claim "For RICO" Fails (Found at Counterclaim Paras. 1-70)

(A) The General RICO Requirements Are Not Even Mentioned

There are several well-accepted pleading requirements for any RICO claim that Edalat does not even attempt. First, Edalat’s RICO claim does not specify

1 which of the four separate subsections of the RICO statute are allegedly involved,
2 and they are all quite different. *See*, 18 U.S.C. 1962 §§ (a) – (d). He must do so.
3
4 *See, Izenberg v. ETS Servs., LLC*, 589 F. Supp. 2d 1193, 1203 (C.D. Cal.
5 2008)(Morrow, J.) ("[I]t is essential to plead precisely in a RICO case the
6 enterprise alleged and the RICO section allegedly violated.") Instead, he quotes
7 *verbatim* the entire definition of "racketeering activity" found in 18 U.S.C §1961
8 and all four subsections of section 1962 (at ¶59 of his Counterclaim)² but does not
9 link any part of that quote to the conduct of any counterclaim defendant, much less
10 inform as to whether all four subsections of section 1962 are alleged against all
11 counterclaim defendants in that long (three-page) quote.
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15 In addition, Edalat fails to allege all the required elements applicable to any
16 of the four subsections under section 1962. These are, as this Court has held:
17

18 The elements of a civil RICO claim are simple enough: (1) conduct
19 (2) of an enterprise (3) through a pattern (4) of racketeering activity
20 (known as 'predicate acts') (5) causing injury to the plaintiff's business
21 or property.
22
23

24 ² Since each of the eight separate claims alleged in Edalat's counterclaim
25 adopts by reference the "General Allegations" stated in the first 60 paragraphs of
26 that pleading, the "General Allegations" are treated as being a part of each of the
27 claims throughout this Memorandum.

1 *Nunag-Tanedo v. E. Baton Rouge Par. Sch. Bd.*, 790 F. Supp. 2d 1134, 1148-51
2 (C.D. Cal. 2011); *see also, Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1481 (9th
3 Cir.1997) (plaintiff must allege “(1) the conduct; (2) of an enterprise; (3) through a
4 pattern; (4) of racketeering activity”). Edalat meets none of these requirements.

5
6 Edalat’s RICO counterclaim fails to describe any “pattern” of racketeering
7 activity, and indeed does not use the word “pattern” except in describing an alleged
8 “pattern of extramarital affairs” (Doc. 70, ¶43(c)(i)), which, along with many more
9 of his turgid allegations, has absolutely nothing to do with any RICO violation.
10
11 Additionally, to allege a RICO conspiracy, as Edalat has attempted, while
12 significant control by each counterclaim defendant is not required, “some part in
13 directing the enterprise's affairs is required.” *Sogecable, SA v. NDS Grp. PLC*, No.
14 04-56990, 2006 WL 3698713, at *2 (9th Cir. Dec. 13, 2006) (quoting *Reves v.*
15 *Ernst & Young*, 507 U.S. 170, 179 (1993)). Edalat fails to allege that each
16 counterclaim defendant had any part in directing the affairs of the alleged
17 "enterprise." Edalat also fails to allege or described the enterprise, nor who was in
18 the enterprise. He does not even use the term outside of quoting the RICO statute.

19
20 Edalat also fails to adequately specify any “predicate acts” at all, or even to
21 use that term anywhere in his pleading, outside of quoting the statute. Moreover,
22 where, as here, RICO is asserted against multiple defendants, a plaintiff must

1 allege at least two predicate acts by each defendant. *See, In re WellPoint, Inc. Out-*
2 *of-Network UCR Rates Litig.*, 865 F. Supp. 2d 1002, 1035 (C.D. Cal.
3 2011)(Gutierrez, J.) (citing *United States v. Persico*, 832 F.2d 705, 714 (2d
4 Cir.1987), cert. denied, 486 U.S. 1022, 108 S.Ct. 1995, 100 L.Ed.2d 227 (1988));
5 *Keel v. Schwarzenegger*, CV 08–7591 RMT (VBK), 2009 WL 1444644, at *6
6 (C.D.Cal. May 19, 2009)(Kenton, J.). Edalat fails to even attempt to do so.

7
8
9 Finally, Edalat fails to state that he has been injured in his business or
10 property, another RICO requirement. *See*, 18 U.S.C. § 1962. Instead he alleges that
11 Pharma Pak was damaged. *See, e.g.*, Para. 62. Pharma Pak, a corporation, is one of
12 the five plaintiffs suing Edalat. That aside, shareholders and limited partners (such
13 as Edalat alleges that he is) lack standing to assert RICO claims where their harm
14 is derivative of their corporation or partnership's harm. *Desoto v. Condon*, 371 F.
15 App'x 822, 824 (9th Cir. 2010) citing *Sparling v. Hoffman Constr. Co.*, 864 F.2d
16 635, 640–41 (9th Cir.1988). Well-established principles of corporate law prevent a
17 shareholder from bringing an individual direct cause of action for an injury done to
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1 the corporation or its property by a third party. *United States v. Stonehill*, 83 F.3d
2 1156, 1160 (9th Cir. 1996).³

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4 **(B) Edalat's Fraud Allegations Fail to Meet Rule 9(b) Requirements**

5 The basis of Edalat's RICO claim and of his parallel state fraud claim
6 (Seventh Claim) is the supposed fraud engaged in by counterclaim defendants.
7 However, Rule 9(b)'s heightened pleading requirements relating to allegations of
8 fraud apply. *Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1066 (9th Cir. 2004).
9 Accordingly, plaintiffs must "detail with particularity the time, place, and manner
10 of each act of fraud, plus the role of each defendant in each scheme." *Mostowfi v.*
11 *I2 Telecon Int'l, Inc.*, 269 Fed. Appx. 621, 623 (9th Cir.2008). In addition, a claim
12 "must set forth what is false or misleading about a statement, and . . . an
13 explanation as to why the statement or omission complained of was false or
14 misleading." *Oculus Innovative Sci., Inc. v. Nofil Corp.*, 2007 WL 2600746 at *3
15 (N.D.Cal.2007) (quoting *Yourish v. Cal. Amplifier*, 191 F.3d 983, 993 n. 10 (9th
16 Cir.1999)).
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25 ³ The one exception is a derivative action brought under Rule 23.1, *Fed. R.*
26 *Civ. P.*, which sets forth a procedure not even attempted by Edalat.

1 Edalat's wire fraud and state fraud allegations fail to allege the time, place,
2 or specific content of any alleged misrepresentation. The allegations are vague and
3 do not come close to defining what each counterclaim defendant is alleged to have
4 fraudulently stated, why it was false, why it was material, when it was stated, and
5 to whom.
6

7
8 The most specific fraudulent conduct alleged by Edalat is that, on January 1,
9 2015, Cahill allegedly forged Edalat's signature on a lease (Doc. 70, ¶45) between
10 Scilabs Pharma, Inc. and Kira Investments, LLC for a property at 17802 Sky Park
11 Circle, Irvine, California; that "Cahill and the Cahill Family Trust along with
12 Cahill Bruce E. Family Trust used this lease document in or about March 2015 as
13 part of a loan application with First Foundation Bank for \$5,000,000 against the
14 property located at 1330 Moorea Way in Laguna Beach, California, APN 641-491-
15 03 and 641-491-02"; that through this lease, Kira Investments wrongfully received
16 over \$30,000 in rent payments and security deposits from Pharma Pak; and that
17 [counterclaim defendant] Cullen emailed the lease to another shareholder over a
18 year later on February 20, 2016. (*Id.*, ¶45(a)(i) to (iv).)
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24 Cahill denies all of this, but it all fails in any event. If any bank was induced
25 to lend money to Cahill or others by some supposed fraudulently-made lease, that
26 does not injure the business or property of Edalat, and he certainly does not allege
27

1 that it does. These allegations fail to state who obtained a loan, what, if any,
2 misrepresentations were made by Cahill, the Cahill Family Trust, or the Cahill
3 Bruce E. Family Trust as part of the loan application, or how the mail or wires
4 were used for this supposedly fraudulent scheme.
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6
7 There are a handful of other fraud allegations attempted by Edalat but these
8 also fail to satisfy Rule 9(b). Paragraph 31 alleges that plaintiff Bruce Cahill:

9
10 repeatedly stated to Edalat that Cahill himself did not have the
11 liquidity needed to fund the venture, and that outside investors would
12 need to be sought. However, as will be illustrated further, this was a
13 falsehood designed to fraudulently induce Edalat into diluting himself
14 out of Pharma Pak, Inc., and to reduce Edalat's shareholder status in
15 the Company.

16 However, Edalat fails anywhere to "illustrate further" how Cahill's statement was a
17 falsehood, to what extent Edalat relied on the alleged falsehood, and was thereby
18 damaged by it, nor how expressing the need to seek outside investors for the
19 Pharma Pak venture was or even could be a falsehood, relied upon or detrimental.

20 Similarly, at paragraph 54, Edalat alleges that "Cahill and Plaintiffs,
21 including Wood and Brent Cahill, also conspired to defraud Edalat, and
22 fraudulently induce Edalat's further investment into the Company with the
23 presentation of falsified accounting, along with falsified business projections." He
24 continues with allegations of falsified projections used as a basis for the valuation
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1 of Pharma Pak, Inc. by Plaintiff Cullen, and that "Wood presented to Edalat and
2 shareholders falsified accounting records." (*Id.*) However, Edalat fails to allege
3 how the accounting and projections were false, what further investment was made,
4 what contract was entered into by Edalat in reliance on any fraudulent statement,
5 and how Edalat was consequently damaged.
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8 At paragraph 55(c), Edalat alleges that "Plaintiffs have, and are currently,
9 conspiring to defraud non-plaintiff Shareholders by reassigning certain patents and
10 trademarks as belonging to Pharma Pak, Inc." This lacks sufficient detail to plead
11 fraud. At paragraph 55(g)(ii), he alleges that Plaintiffs utilize a "stock photograph
12 of a textile manufacturing facility", but absent any particularity to show why the
13 common practice of using stock photos is a fraud that damaged Edalat, this
14 allegation does not show fraud, much less meet the Rule 9(b) particularities. At
15 paragraph 55(h), Edalat alleges that Life Tech Global's website statement is
16 fraudulent because it states that "Medical devices and pharmaceutical[sic] are
17 produced in a cGMP and CFR compliant, FDA licensed manufacturing facility"
18 even though allegedly "[n]o licensing exists under the Life Tech Global name, not
19 even a business license as illustrated by Exhibit EEE, purporting to show a search
20 of an online business license database for the City of Irvine reflecting no search
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1 results." Even assuming the validity of the exhibit, this allegation fails to allege
2 how Edalat justifiably relied on this statement nor how he was damaged by it.
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4 This alleged fraudulent conduct fails under Rule 9(b) to state any claim.

5 **(C) The Interstate Commerce Requirement**

6
7 Edalat fails to allege a connection with interstate commerce. *Musick v.*
8 *Burke*, 913 F.2d 1390, 1398 (9th Cir. 1990) (to state a civil RICO claim, the
9 enterprise engaged in the racketeering activity must have a nexus to interstate
10 commerce). Nor does he allege how the instrumentalities of interstate commerce
11 were used. Finally, Edalat only generally alleges that the counterclaim defendants
12 "have used the wire services, the US mail services, committed bank, wire, and
13 postal fraud in their criminal actions and activities." (*Id.*, ¶ 69.) This generalized
14 allegation is insufficient as it does not specify the date, or to whom any such
15 communications were sent, nor that they furthered any fraud, as is required.
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19 **III. Edalat's Second Claim for "Embezzlement" Fails Under**
20 **Rule 12(b)(6) (Found at Paras. 1-60 and 71-75)**

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22 Edalat alleges that counterclaim defendants "conspired to steal assets from
23 "Pharma Pak." (Doc. 70, ¶71), yet Edalat fails to adequately plead any basis for
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1 this “embezzlement” claim. Under California law,⁴ embezzlement is a criminal act.
2 Cal. Penal Code §503 (“Embezzlement is the fraudulent appropriation of property
3 by a person to whom it has been entrusted.”) There is no civil claim for
4 embezzlement under California law. Plaintiff cites to no statute which suggests any
5 civil cause of action for embezzlement or diversion of funds; rather he cites to the
6 Penal Code. (*Id.*, ¶ 63) Therefore, Edalat’s claim for “embezzlement” against all
7 counterclaim defendants should be dismissed.
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11 Viewing the allegations in the light most favorable to Edalat, the
12 “embezzlement” claim could be construed as one for conversion, for which Edalat
13 must allege three elements: (1) his ownership, or right to possession, of property at
14 the time of the conversion, (2) the counterclaim defendants’ conversion, by
15 wrongful act or disposition of property rights, and (3) damages. *See, Mindys*
16 *Cosmetics, Inc. v. Dakar*, 611 F.3d 590, 601 (9th Cir. 2010). Edalat fails to allege
17 his ownership or right to possession of the \$1,000,000.0 in cash or to any other
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21 ⁴ Movants assume that this Edalat counterclaim is attempted under state law.
22 No federal embezzlement law is cited. In addition, since this Second Claim, as well
23 as all the remaining six claims, are brought under state law, they all fail to make
24 the supplemental jurisdictional allegations required. They do not even attempt to
25 show that these state claims are so related to the RICO claim brought by Plaintiffs
26 against Edalat, or even related to his defective RICO claim attempted in his First
27 Counterclaim, that they form part of the same case or controversy as these two
28 federal claims. *See*, 28 U.S.C. §1367 – supplemental jurisdiction.

1 assets he claims to have been embezzled from Pharma Pak. He specifically alleges
2 the assets were taken from Pharma Pak (*id.*, ¶ 72) and does not explain why he has
3 any claim to this money.
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5 Edalat also fails to allege the basis for his claim that monies transferred from
6 Pharma Pak to Life Tech Global was a wrongful act, why rent payments made
7 from Pharma Pak to Kira Investments, LLC were wrongful, or why he, rather than
8 Pharma Pak, could make a claim for lost assets of Pharma Pak. In addition, while
9 he complains that Plaintiff Cahill used a fake lease to secure a loan from the
10 Foundation Bank, he offers no hint as to why he has any claim for any supposed
11 loss by that bank from any such fraud.
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15 **IV. Edalat's Third Claim for "Breach of Contract" Fails Under**
16 **Rule 12(b)(6) (Found at Paras. 1-60 and 76-80)**

17 Under California law, to state a claim for breach of contract, a plaintiff must
18 plead “the contract, plaintiffs' performance (or excuse for nonperformance),
19 defendant's breach, and damage to plaintiff therefrom.” *Gautier v. General Tel.*
20 *Co.*, 234 Cal.App.2d 302, 305, 44 Cal.Rptr. 404 (1965). To establish contractual
21 damages, a Plaintiff must establish “appreciable and actual damage.” *Aguilera v.*
22 *Pirelli Armstrong Tire Corp.*, 223 F.3d 1010, 1015 (9th Cir. 2000); *Patent*
23 *Scaffolding Co. v. William Simpson Const. Co.*, 256 Cal.App.2d 506, 511, 64
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1 Cal.Rptr. 187 (1967) (“A breach of contract without damage is not actionable.”).
2 Nominal damages, speculative harm, or threat of future harm do not suffice to
3 show legally cognizable injury. *See, Aguilera*, 223 F.3d at 1015; *see also Ruiz v.*
4 *Gap, Inc.*, 622 F.Supp.2d 908, 917 (N.D.Cal. 2009).

5
6 Edalat's "Third Claim" alleges a "contract was entered into by Cahill and
7 Edalat to form the new corporation [Pharma Pak]" (Doc. 70, ¶ 79) but fails to
8 identify or to attach a written contract (despite including over 70 other exhibits)
9 and fails to identify the terms of any supposed verbal contract he claims to have
10 been made and breached. Edalat also fails to allege the specific damages he
11 personally suffered as a direct result of any alleged breach by Cahill. Moreover,
12 Edalat specifically alleges that this supposed contract was entered between Edalat
13 and Cahill (*id.*) and no other counterclaim defendants. Therefore, while Edalat
14 fails to sufficiently plead a contract claim against Cahill, he does not even attempt
15 to plead such a claim against the other 15 counterclaim defendants.

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21 **V. Edalat's Fourth Claim for "Breach of Fiduciary Duties" Fails**
22 **Under 12(b)(6) (Found at Paras. 1-60 and 81-84)**

23 To state a claim for breach of fiduciary duty, under California law, a plaintiff
24 must show (1) the existence of a fiduciary duty; (2) a breach of the fiduciary duty;
25

1 and (3) resulting damage. *Pellegrini v. Weiss*, 165 Cal.App.4th 515, 81 Cal.Rptr.3d
2 387, 397 (Cal.Ct.App. 2008).

3
4 Edalat alleges that the counterclaim defendants have breached their duties as
5 shareholders of Pharma Pak "by stealing company assets, attempting to steal
6 Edalat's patents, moving all of the company assets out of the Gillette Avenue
7 office in Irvine, California, and moving operations to two new locations ... [and]
8 breached their duties when Cahill improperly sexually harassed Karpinski on
9 numerous occasions, and fired all of the employees in retaliation for their reporting
10 of Cross-Defendant's [sic] illegal behavior." (Doc. 70, ¶ 83)

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13
14 Edalat fails to allege sufficient facts to support a claim of sexual harassment
15 of Karpinski, or how that could rise to a breach of a fiduciary duty. Similarly,
16 Edalat fails to allege how the alleged firing of an employee breached a duty to
17 Edalat. He also fails to allege who specifically owed him any fiduciary duty, or
18 why. Edalat's allegations here are thus deficient and too vague, and the claim fails.
19
20

21 **VI. Edalat's Fifth Claim for "Breach of the Covenant of Good Faith**
22 **and Fair Dealings" Fails Under Rule 12(b)(6) (Found at Paras. 1-**
23 **60 and 85-88)**

24 A claim for breach of the covenant of good faith and fair dealing requires the
25 plaintiff to first adequately allege that the plaintiff and the defendant entered into a
26 contract. *See*, Judicial Counsel of California Civil Jury Instructions § 325 (2011);
27

1 *see also, Oculus Innovative Sciences, Inc., supra.*, 2007 WL 2600746, at *4
2 (N.D.Cal. Sept. 10, 2007).
3

4 The only contract alleged to exist in his counterclaim is the contract entered
5 into "by Cahill and Edalat to form the new corporation [Pharma Pak]." (Doc. 44, ¶
6 71.) But again, as explained at pages 11-12 above, Edalat fails to identify or to
7 attach a written contract and fails to identify the terms of any supposed verbal
8 contract that he claims to have been breached by Cahill. Edalat also fails to allege
9 the specific damages he personally suffered as a direct result of any breach by
10 Cahill, separate and apart from the contract damages claimed earlier under his
11 breach of contract claim. *See, Careau & Co. v. Security Pac. Bus. Credit, Inc.*, 222
12 Cal.App.3d 1371, 1393-95, 272 Cal.Rptr. 387 (1990)("breach of implied covenant
13 of good faith and fair dealing involves something beyond breach of the contractual
14 duty itself If the allegations do not go beyond the statement of a mere contract
15 breach and, relying on the same alleged acts, simply seek the same damages or
16 other relief already claimed in a companion contract cause of action, they may be
17 disregarded . . . ") Edalat fails in this regard as well.
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24 **VII. Edalat's Sixth Claim for "Breach of Fiduciary Duties" Fails**
25 **Under Rule 12(b)(6) (Found at Paras. 1-60 and 89-92)**
26

1 Just like Edalat's first breach of fiduciary duty claim (the "Fourth Claim"
2 addressed at Section V., above), this claim must be dismissed. Edalat alleges that
3 "Cahill and the other board members" owed him a duty and breached that duty "by
4 embezzlement of company assets and contracts and making illegal drugs on the
5 premises without a license" (Doc. 70, ¶ 91), which he claims damaged him in an
6 amount no less than \$100,000,000 (the same amount of money he claims
7 throughout the Counterclaim as assets stolen from Pharma Pak). Edalat fails to
8 allege the duty owed to him. As explained above, he fails to sufficiently allege an
9 embezzlement or conversion claim, and thus fails to plead such conduct as grounds
10 for a breach of fiduciary duty. Finally, Edalat fails to sufficiently allege facts
11 showing he was personally damaged by the alleged wrongful conduct.
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17 **VIII. Edalat's Seventh Claim for "Fraud" Fails Under Rule 12(b)(6)**
18 **(Found at Paras. 1-60 and 93-97)**

19 Under California law, the elements of fraud, are: (1) misrepresentation (false
20 representation, concealment, or nondisclosure); (2) knowledge of falsity (scienter);
21 (3) intent to defraud (*i.e.*, to induce reliance); (4) justifiable reliance; and (5)
22 resulting damage. *Anderson v. Deloitte & Touche*, 56 Cal.App.4th 1468, 1474, 66
23 Cal.Rptr.2d 512 (1997). The elements of fraud in inducement of a contract are the
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1 same elements as actual fraud. *See*, Cal. Civ.Code § 1572; *Zinn v. Ex-Cell-O*
2 *Corp.*, 148 Cal.App.2d 56, 68, 306 P.2d 1017 (1957).
3

4 Under Federal Rule of Civil Procedure 9(b), a plaintiff must plead fraud with
5 particularity. “Rule 9(b)'s particularity requirement applies to state-law causes of
6 action.” *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1103 (9th Cir.2003).
7

8 “Averments of fraud must be accompanied by ‘the who, what, when, where, and
9 how’ of the misconduct charged.” *Id.* at 1106 (quoting *Cooper v. Pickett*, 137 F.3d
10 616, 627 (9th Cir.1997)). “ ‘[A] plaintiff must set forth more than the neutral facts
11 necessary to identify the transaction. The plaintiff must set forth what is false or
12 misleading about a statement, and why it is false.’ ” *Id.* at 1106 (quoting *Decker v.*
13 *GlenFed, Inc. (In re GlenFed, Inc. Sec. Litig.)*, 42 F.3d 1541, 1548 (9th Cir.1994)).
14 “While statements of the time, place and nature of the alleged fraudulent activities
15 are sufficient, mere conclusory allegations of fraud” are not. *Moore v. Kayport*
16 *Package Express, Inc.*, 885 F.2d 531, 540 (9th Cir.1989).
17

18 Like his RICO-based fraud claim (discussed at Section II. B.), Edalat's state
19 fraud claim fails to set forth allegations with sufficient particularity as required
20 under Rule 9(b). The specific allegations asserted under Edalat's Seventh Claim
21 are that Edalat "entered into a group of contracts with these Cross-Defendants
22 which the Cross-Defendants broke because they never intended to comply with the
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1 terms and conditions of the contract" (Doc. 70, ¶94); that Edalat was fraudulently
2 induced into these contracts so that counterclaim defendants "could gain control of
3 his company, his patents and his contacts so that they could steal the company;"
4 (*Id.*, ¶95) and he has been damaged as a direct result in an amount no less than
5 \$100,000,000. (*Id.*, ¶96)
6
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8 Edalat fails to specifically identify the "group of contracts" and which
9 counterclaim defendants were party to these contracts. He fails to specify any
10 fraudulent statements made to induce him into entering a contract, who made each
11 statement, when any statement was made, and how the statement was fraudulent,
12 either by identifying the misrepresentation or material omission. Edalat repeatedly
13 describes statements or conduct as "fraudulent" without more, which is
14 insufficient.
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18 **IX. The Eighth Claim (Trespass and Theft) Fails As Asserted By**
19 **an Impermissibly Joined New Party (at Paras. 1-60 and 99-101)**

20 As if beamed down from the Starship Enterprise, the Eighth Count comes
21 out of nowhere to allege that a newly arrived party, Medipatch, Inc. is seeking
22 damages against all counterclaim defendants because they allegedly "broke into
23 the Medipatch building . . . And then produced and manufactured more than
24 15,000 patches with a retail value \$300,000.00." (Doc. 70, ¶ 99) Apart from
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1 vaguely worded damage and brief constructive trust allegations that follow, this
2 one paragraph trespass and theft allegation is all there is. There is no date stated, no
3 wrongdoing parties enumerated, nor any location provided. This completely fails.
4

5 First, as a matter of jurisdiction, there is no showing, nor can it be remotely
6 inferred, that this “trespass/theft” claim is at all related to the claims or
7 counterclaims brought by the original plaintiffs or those asserted by Karpinski or
8 Edalat. No attempt was made by this newly-arrived Medipatch, Inc. to allege that
9 its newly-added presence and claim met the test for supplemental jurisdiction
10 under 28 U.S.C. §1347. Second, and for the same reason, this claim cannot meet
11 the permissive joinder requirement found in Rule 20, *Fed. R. Civ. P.*, that the
12 Medipatch claim “arises out of the same transaction, occurrence, or series of
13 transactions or occurrences,” and will present a common question of law or fact”
14 as presented in the other claims. Third, Medipatch did not file a motion to
15 intervene in this action as required under Rule 24, *Fed. R. Civ. P.* nor make a
16 showing that its intervention in this case is appropriate. *See, Donnelly v. Glickman*,
17 159 F.3d 405, 409 (9th Cir.1998); *Nat’l Rural Telecommunications Co-op. v.*
18 *DIRECTV, Inc.*, 319 F. Supp. 2d 1094, 1098–99 (C.D. Cal. 2003) (Baird, J)
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25 **X. The Eleven Newly-Added Counterclaim Defendants Should Be**
26 **Dismissed For Another Reason – Their Non-Involvement**

1 If ever there were a group that could be called the "kitchen sink," it is the
2 eleven newly-added counterclaim defendants. Each one is addressed separately:
3

4 **Leslie Harold Wood:** Edalat alleges that "Wood earned illegitimate wages,
5 and was directly involved in the conspiracy to defraud Pharma Pak, Inc. and
6 investors." (Doc. 70, ¶8) He further alleges that Wood "[w]ithout Shareholder
7 approval, and unbeknownst to Edalat and the other Shareholders" filed a Statement
8 of Information with the California Secretary of State on April 1, 2015, "removing
9 Edalat as Secretary, and placing Wood as both Secretary of Pharma Pak, Inc., and
10 Chief Financial Officer." (*Id.*, ¶41(b)) This allegation fails to state any false
11 statements by Wood on which Edalat relied and was damaged, as required to plead
12 fraud under California law and Rule 9(b).
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17 Edalat's additional allegations against Wood similarly fail to plead the
18 elements of fraud and to specify "the who, what, when, where, and
19 how" of the misconduct charged, as required:
20

- 21 • At paragraphs 45; 45(e); 45(f); 52(d)(i)): Edalat alleges that Wood
22 "conspired" with plaintiff Bruce Cahill "to defraud" the lessor of the
23 manufacturing facility (Olen Corporation) and utility companies, and
24 embezzled from the Pharma Pak corporate bank account without further
25 specific allegations required to establish fraud.
26
27

- At paragraph 50, he alleges "On March 3, 2016, Cahill, Wood, and the unnamed "private investigator" told Defendant Karpinski that a "majority shareholder's vote" had dissolved the corporation. No such vote had taken place." Edalat fails to state how this alleged false statement, made to Karpinski and not Edalat, was relied on by Edalat to his detriment.
- At paragraph 53(x), he alleges that Wood "conspired" with others to make non-Pharma Pak payments through the Pharma Pak bank account without approval. This is a "mere conclusory" allegation of fraud insufficient to state a claim of fraud.
- At paragraph 54, Edalat alleges that Wood was involved in a conspiracy to defraud Edalat and "fraudulently induce Edalat's further investment into the Company with the presentation of falsified accounting, along with falsified business projections," and that "Wood presented to Edalat and shareholders falsified accounting records." Edalat fails to allege how the accounting and projections were false, what further investment was made or contract was entered into by Edalat on the basis of any particular fraudulent statement, and how Edalat was consequently damaged.

1 **Mark John Erfurt:** Edalat alleges that Erfurt "defrauded Pharma Pak, Inc.
2 through illicit reimbursements and other such payments" (*Id.*, ¶10) but never
3 identifies the specific reimbursements by dates, amounts, or how they were
4 fraudulent. Edalat also claims that Erfurt failed to disclose an alleged criminal
5 history prior to his hiring, presumably claiming that Erfurt would not have been
6 hired or paid by Pharma Pak if Edalat and other shareholders knew this
7 information, but does not specifically allege that is the case. (*Id.*, ¶52(b)) In any
8 event this would not defraud Edalat individually, nor show Edalat justifiably relied
9 on the misrepresentation or omission and was thereby damaged. Edalat also alleges
10 that Erfurt destroyed company records and computers (*id.*) and received "grossly
11 exaggerated compensation" (*Id.*, ¶53(g)) but gives no details to connect this to
12 fraud or any other claim, nor alleges how it damaged him.

13 **Ertan Aydinol:** In addition to the Medipatch allegations addressed above,
14 Edalat alleges Aydinol "conspired to defraud Pharma Pak, Inc. and its investors,
15 and further embezzled cash from the Company. Aydinol earned illegitimate wages,
16 and further conspired to defraud Pharma Pak, Inc. and its investors" (*Id.*, ¶11)
17 without the required particularity. At paragraph 52(c), Edalat alleges that
18 counterclaim defendant Aydinol had "stated to Cahill that he had been making
19 "over \$10,000 a month" at his former employer; however, Cahill never did his due

1 diligence, and it came to light that Aydinol's actual previous salary was a fraction
2 thereof, and Aydinol's statements were purposefully fraudulent and misleading."
3
4 Edalat makes no allegation that this alleged misrepresentation was made to Edalat
5 nor that it induced Edalat to enter any contract or transaction with Aydinol, causing
6 damage.
7

8 **Karen Jane Grobba-Cahill:** Edalat only alleges that Mrs. Cahill "is a
9 beneficiary of the Cahill Family Trust and Cahill Bruce E. Trust," "conspired with
10 [plaintiff] Cahill to produce a fraudulent loan application" and "conspired...to lull
11 Edalat into further investments of monies and resources into Pharma Pak, Inc. for
12 her own benefit." (*Id.*, ¶¶ 12, 43(c)(1)) These two conclusory allegations on their
13 face fail to plead the specifics of the alleged fraud as required, much less implicate
14 her in a RICO conspiracy.
15
16
17

18 **Kira Lindsay Cahill:** Edalat only alleges Kira Cahill was a beneficiary of
19 alleged fraud and forgery (*Id.*, ¶¶ 13, 45(a)(vi)) and nothing more, clearly failing to
20 plead a fraud claim against her (and it appears this allegation was included only to
21 embarrass and attack the Cahill family).
22
23

24 **Cahill Family Trust and the Cahill Bruce E. Trust:** Edalat alleges that
25 these trusts are "directly involved in the forgery and fraudulent loan application
26 submitted to First Foundation bank." (*Id.*, ¶¶ 14, 15) Against both Trusts, Edalat
27

24

1 then alleges that they used an allegedly forged lease to obtain a loan (*Id.*,
2 ¶45(a)(ii)). These are merely conclusory allegations lacking required specification
3 as to "who, what, when, where, and how."
4

5 The same is true for **Kira Investments, LLC**, which Edalat alleges was
6 "involved in the forgery and recipient of illicit gains via fraudulent rent payments"
7 connected to the alleged forged lease (¶¶16, 45(a), 45(a)(iv)(2 – 4), 45(a)(vi),
8 53(g)(viii), 73), but makes no specific allegations of when Kira Investments made
9 any misrepresentations, what they were, who they were made to, how they were
10 fraudulent, and how Edalat relied on them to his detriment.
11
12

13 Finally, as to **Life Tech Global, LLC**, Edalat alleges this company "has
14 stolen Pharma Pak, Inc. assets, cash, and intellectual property, and is the vehicle
15 through which cross-defendants are hiding their illicit activities" (*Id.*, ¶18), without
16 providing any specifics as to how Life Tech Global perpetrated fraud against
17 Edalat. Edalat makes some allegations that Life Tech Global's website makes
18 fraudulent statements (*see* Section II. B.), and otherwise makes no other fraud
19 allegations against Life Tech Global.
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23 For reasons stated above, Edalat's First Amended Counterclaim should be
24 dismissed.
25
26

1 Dated: August 22, 2016

Respectfully submitted,

2 MARKHAM & READ

3
4 By: /s/ John J.E. Markham, II

5 John J.E. Markham, II

6 Attorney for Plaintiffs

7 *Attorney for all Plaintiffs*

CERTIFICATE OF SERVICE

Commonwealth of Massachusetts) ss.
County of Suffolk.)

I am employed in the county and state aforesaid. I am over the age of 18 and not a party to the within action. My business address is One Commercial Wharf West, Boston MA 02110

On August 22, 2016, I served the foregoing document described as:

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' AND ELEVEN
ADDITIONAL COUNTERCLAIM DEFENDANTS' MOTION TO DISMISS
THE FIRST AMENDED COUNTERCLAIM OF DEFENDANT PAUL
EDALAT (DOC. #70)**

[X] BY ELECTRONIC MAIL via the ECF filing system on:

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27

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' AND ELEVEN ADDITIONAL
COUNTERCLAIM DEFENDANTS' MOTION TO DISMISS THE FIRST AMENDED
COUNTERCLAIM OF DEFENDANT PAUL EDALAT (DOC. #70)**

CASE NO: 8:16-cv-00686-AG-DFM

1 *Sentar Pharmaceuticals, Inc., Blue Torch Ventures, Inc., LIWA, N.A., Inc., and*
2 *Sentus Land Management, LLC*

3 Executed on August 22, 2016, in Boston, Massachusetts.

4 I declare under penalty of perjury under the laws of the United States and the State
5 of California that the above is true and correct.
6

7 /s/ John J.E. Markham, II

8 John J.E. Markham, II
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